



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/166336

PRELIMINARY RECITALS

Pursuant to a petition filed June 02, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lutheran Social Services of Wisconsin & Upper Mich in regard to Medical Assistance, a hearing was held on June 24, 2015, at Appleton, Wisconsin.

The issue for determination is whether petitioner meets an institutional level of care required for CLTS eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Danielle Johnson

Lutheran Social Services of Wisconsin & Upper Mich
CLTS Program Manager
3003 N. Richmond St.
Appleton, WI 53217

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. The petitioner applied for the Children's Long-Term Support Medicaid Home and Community-Based Services Waiver (CLTS Waiver).
3. On April 21, 2015 the agency conducted a Children's Long Term Supports Functional Screen of the petitioner.
4. On April 28, 2015 the agency sent the petitioner a letter stating that the petitioner did not meet the Level of Care requirement necessary to be eligible for the CLTS Waiver.
5. On June 2, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
6. The petitioner is a seven year old boy. He is soon to be eight years old. He is diagnosed with Autism Spectrum Disorder, Mood Disorder NOS, ADHD combined type, Oppositional Defiant Disorder, and PTSD. He sees a psychiatrist and also has therapy through Family Services. He was hospitalized in Bellin Psychiatric Center three times in a week in September 2012. He was admitted to [REDACTED] Institute from March 4, 2014 through March 21, 2014. He also had his school schedule reduced to three hours a day. Since that time his school schedule has increased to the traditional five full days per week.

DISCUSSION

The CLTS program started on January 1, 2004 after the federal Department of Health and Human Services informed the state department that federal MA funding would no longer be available for in-home autism services. The department drafted and released the Interim Medicaid Home and Community-Based Waivers Manual ("the Manual") that became effective with the start of the CLTS program. The Manual also covers the Community Integration 1A and 1B programs and the Traumatic Brain Injury Waiver program. It can be found on the internet at <http://www.dhs.wisconsin.gov/bdds/waivermanual/index.htm>.

The Manual provides that an individual must meet several eligibility criteria for these programs, one of which is level of care. Manual, §2.07D. In addition, the child must be part of a waiver target group. Those groups include children with developmental disabilities, those with physical disabilities, and those with severe emotional disturbance. Manual, §2.02.

The level of care criteria are found in the Manual's Appendix A-10, dated February, 2011. I will not discuss the hospital or nursing home levels because they involve physical disabilities. Petitioner's impairments are mental and emotional.

To meet the psychiatric hospital (SED) level of care, the child must have an emotional disturbance that has persisted at least six months and is expected to persist for at least one year; it must be diagnosed by a certified psychiatrist or psychologist using the DSM-IV classifications; there must be severe psychiatric symptoms or dangerous behaviors as described in one of four standards; and the child must be receiving services from at least two service systems including the juvenile system, child protective services, special education relating to emotional needs, substance abuse services, or the mental health system (or from one of the systems but for at least three hours per week). *Id.*, p. 8. The child must be at risk of psychiatric hospitalization without appropriate home/community interventions.

The fourth criterion is that the child must have severe symptomology or substantial impairments in behavior or functioning.

Under the current criteria the severe symptom criterion includes several standards in descending order. The first standard is that the child will be found to have severe symptoms if he has one of four symptoms either currently, within the past three months, or twice within the past year: psychosis, suicidality, violence, or anorexia/bulimia. Violence is defined as acts that endanger another person's life, and that cause the victim

to require inpatient admission to a hospital. Additional definitions include the use of a weapon against another person (e.g., gun, knife, chains, or baseball bat), acts of arson (purposeful fire setting) or bomb threats. The child must have committed violence at least once in the past three months or at least twice in the past year, and because of the commission of violence, the child must require direct, daily interventions to avoid institutionalization in a psychiatric hospital. Id., p. 13. The petitioner does not have any of those symptoms. Any violence exhibited by the petitioner fails to rise to this level.

The next standard under the severe symptom criterion is that the child have frequent and intense problems in two of the following four behaviors: (1) High-risk behaviors such as running away, substance abuse, dangerous sexual contact, use of inhalants, (2) self-injurious behaviors such as head banging against hard surfaces, cutting/burning oneself, biting oneself severely, tearing at or out body parts, inserting harmful objects into body orifices, (3) aggressive/offensive behavior toward others such as verbal abuse, hitting/biting/kicking, masturbating in public, urinating on another or smearing feces, serious threats of violence, sexually inappropriate behavior, animal abuse, (4) lack of behavioral controls such as destruction of property, stealing/burglary, obsessions interfering with daily life.

Such behaviors must occur at least four times per week and require professional intervention whenever they occur. I do not believe that petitioner meets any of those behaviors at the required intensity. The petitioner's therapist testified that the petitioner has exhibited violent behavior in therapy. This violent behavior has consisted of knocking items off of the wall. She testified that this occurred on average one time per month. The petitioner's mother testified that the petitioner constantly exhibits violent behavior at home. However, there is no documentary evidence to support the mother's claim. The mother told the screener that physical aggression happens about two to three times per week at home.

In reviewing the therapy notes, I am not convinced that the majority of outbursts fit the aggressive/offensive behavior criteria. Some of these outbursts are directed toward the petitioner's brother. Both brothers seem to provoke each other. There are some outbursts that rise to this very high level, however, there is not sufficient evidence to show that these outbursts take place at least four times per week. The school has only had to physically restrain the petitioner two times during the 2014-2015 school year. In addition, at four times per week each outburst would have to involve the both the destruction of property to satisfy the lack of behavior controls criteria as well as the characteristics of the aggressive/offensive behavior. There was no testimony that the petitioner broke various items in the home or in the therapist's car or office. There is no evidence that the petitioner has destroyed property at school either. There was some testimony about obsessions, however, there is even less documentary evidence of that, and no evidence that these obsessions impact the petitioner's daily life. Most impacting on the petitioner's daily life is when he does not get what he wants, he has an outburst. This can sometimes be redirected, and sometimes it cannot. This does not rise to this level or meet this category.

The third standard is that the child has one of the four behaviors in the second standard, plus a significant deficit in social skills or school/work issues. Deficits in social skills include not making eye contact, absence/dramatic reduction of social interactions, inability to interpret others' non-verbal cues, not having similar aged friends (i.e. friends are either much older or much younger), excessive familiarity with strangers. School/work issues include failing grades, repeated truancy, and/or inability to conform to the school or work schedule, or the need for in-school supports for emotional/behavioral problems at least one-third of the time.

The petitioner does not meet the requirement of one dangerous behavior and it is not evident that he meets the standards for social skills or school issues. I note that even if the petitioner met the requirement of one dangerous behavior he would not meet the standard for social skills or school issues. Although the petitioner has issues at school, the issues appear to have improved, and are not sufficient to meet this standard. There is no evidence that he needs in-schools supports for emotional/behavior problems at least one-third of the time. He has required some modifications, for example, he chooses his own seat. The

screeners notes that the petitioner was able to identify an age-appropriate best friend. The mother states that this friend is more of an unhealthy obsession. However, the screener who is a trained professional did not identify the petitioner's explanation of his friend as this unhealthy obsession as mom purports.

The final standard requires the child to meet one dangerous behavior or one deficit in social or school/work skills, plus have a "rare and extreme circumstance" such as daily extreme disruptive behaviors, severe nightmares or night terrors four times per week, or being unable to complete routine events daily due to an obsession. Again, petitioner's current mental/emotional problems are not at those levels. There is nothing in the record to support a rare or extreme circumstance.

The petitioner was hospitalized at [REDACTED] in March of 2014. He was on a reduced school schedule that has since been increased to five full days per week. The petitioner regularly attends therapy. Although the therapists belief that the therapy has produced a mixed bag as far as results. It appears that his outbursts are less frequent and less severe. The petitioner appears to be getting excellent care and services currently. I am somewhat unclear what additional services this program would allow the petitioner to receive. Regardless, at this point in time the petitioner does not meet level of care required for CLTS eligibility. If the petitioner's behavior worsens or he exhibits more of the type of behaviors discussed above he may reapply for the program.

CONCLUSIONS OF LAW

The petitioner does not meet an institutional level of care required for CLTS eligibility.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

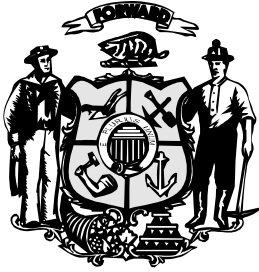
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of August, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 4, 2015.

Lutheran Social Services of Wisconsin & Upper Michigan
Bureau of Long-Term Support